City of Seattle

CONTRACT FOR OSISOFT PI SYSTEM SOFTWARE
FOR SEATTLE CITY LIGHT

This Contract (also referred to as the "Agreement") is made and entered into by and between City of Seattle (referred to as "Seattle" or the "City"), a Washington municipal corporation; and OSIsoft, Inc. ("Contractor") a **corporation** of the State of California and authorized to do business in the State of Washington.

> Business Name: OSIsoft, Inc.
> Representative: Roger Kammerer
> Address: 777 Davis St Suite 250, San Leandro CA 94577
> Phone: 425-201-5917
> Fax: 425-201-5940
> E-mail: rkammerer@osisoft.com

> WHEREAS, the purpose of this contract is to purchase a license for software, and for support and training for OSISoft's PI System ("Software") and for Contractor to perform a standard installation of the Software; and

> WHEREAS, Contractor was selected as a result of a Request for Proposal process initiated November 2006 as required by Seattle Municipal Code since costs are anticipated to exceed $41,000 in value; and

> WHEREAS, funds for this purpose are authorized through City of Seattle annual budget;

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance of the scope of work contained herein, as attached and made a part hereof, Seattle and Contractor mutually agree as follows:

1. **Term of Contract for Maintenance and Support Only**
   This Contract shall be effective for an initial term commencing on the Effective Date and extending for five (5) years after the City's Final Acceptance.

2. **Time of Beginning and Completion**
   Contractor shall begin the work stated in the "Scope of Work" section, attached hereto as **Exhibit A**, upon receipt of written notice to proceed from Seattle. Seattle will acknowledge in writing when work is complete. Time limits established pursuant to this Contract shall not be extended because of delays for which Contractor is responsible, but may be extended by Seattle, in writing, for its convenience. This does not mitigate the rights provided to the City and Contractor under article 38.B herein.

3. **Scope of Work.**
   Contractor shall provide the following software services and tasks as specified in the Scope of Work and OSIsoft Proposal #4000006533-7, attached hereto as **Exhibit A** and **Exhibit B**, respectively. The parties agree and acknowledge that Systems Integration Company, Inc. (referred to as "SISCO") will perform the implementation of the ICCP node and any other applicable services.

4. Work Order Process

The Contractor shall furnish all systems beyond the defined Scope of Work pursuant to work orders issued under this Contract and mutually agreed to by the parties. Each work order shall be subject to all of the terms and conditions of this Contract, and incorporated into this Contract by this reference. The Contractor shall furnish all the goods and services ("deliverables") specified in the work order in an aggregate, single, complete transaction and not as separate items, whenever possible. For each work order under this Contract, Contractor shall commence work upon issuance of a notice to proceed by the City.

Work orders under this Contract may be generated by the City under the following conditions:

(1) A post-warranty annual maintenance agreement is accepted by the City;

(2) The City issues a request to upgrade equipment, software, or to change quantities of any deliverable;

(3) The City orders additional custom features or interfaces for the Systems prior to or after the Police acceptance period; or

For any subsequent work order(s) requested by either party, the Contractor shall submit a detailed proposal for the change. The Contractor shall analyze, record, estimate and submit to the City, for its approval, the proposed scope for the changed or new work, a work schedule, and a rate or price adjustment for completion of the work to be changed or added. Once this proposal is received and approved by the City, a new work order will be issued for the changed or additional work. Upon the City's written approval and notice to proceed and if mutually agreed to by the parties, the Contractor shall implement the change or additional work and invoice for the changed or additional work consistent with the City's approval notice and the terms and conditions of this Contract.

The City may, at its option, add, delete or modify any part of any work order with respect to services not yet performed and/or products or software not yet delivered by Contractor by giving Contractor notice of such change within the time period specified in the applicable work order. Within seven (7) days after the date of such notice, the Contractor shall deliver to the City an amended work order reflecting the change in description, schedule and/or dollar amount due using the unit prices as proposed for the specific work order in Contractor's Proposal.

5. Documentation

Contractor shall provide City with all applicable documentation for each deliverable and any modification or enhancement thereof. The City reserves the right to withhold payment for a deliverable, modification or enhancement until it receives all documentation associated with the same.

6. Payment/Payment Procedures.

Contractor shall only invoice upon the City's approval of the deliverable. If City does not provide Contractor with notice indicating that deliverable has not been accepted within thirty (30) days after delivery of such deliverable, the deliverable will be deemed to be accepted. Once the City has received and approved the invoice, the City will provide payment within thirty (30) days. The aggregate amount set forth in the work order represents the full and final amount to be paid by the City for all expenses incurred and incidentals necessary to complete the work and to provide the software services and tasks as specified in **Exhibit A** and **Exhibit B**.

The City shall not be obligated to pay any other compensation, fees, charges, prices or costs, nor shall Contractor charge any additional compensation for completing the work order of the Statement of Work. All costs invoiced to the City, shall be associated with an active and open work order.

Invoices for software installed in City facilities and other work performed under this Contract shall be submitted, in writing to the City's Project Director. In addition to agreed upon charges, invoices shall include such information as is necessary for the City to determine the exact nature of all expenditures and shall reference this Contract. Additional payment terms or invoice instructions may be mutually agreed upon by the City and the Contractor.

If between the date of this Contract and the date the System is delivered to the City, the Contractor announces a reduction in the price for any of the System equipment or software contained herein, then the price for such System equipment or software shall be decreased by an amount equal to the general reduction in the price for such System equipment or software. Payment does not constitute whole or partial acceptance of the System; City acceptance of the System shall only occur by formal written notice to that effect or deemed acceptance as specified above.

6.1 Contract Value.
Total Contract value shall not exceed $328,840. without approval and authorization in writing by Seattle. Such authorization is to be sought in advance of the work performed. Services performed that exceed that value shall be performed at sole choice of Contractor, and shall not be compensated, unless Seattle provides a written authorization to Contractor.

6.2 Travel.
In such event that certain travel is pre-approved by Seattle, Seattle will compensate travel expenses not to exceed actual travel costs given the following limitations. Contractor and Seattle shall determine the need for on-site presence and Seattle shall pre-approve travel. Contractor shall be entitled to reasonable expenses as defined below, not to exceed the actual amount of travel costs.

- **Airfare**: Airfare will be reimbursed at the actual cost of the airline ticket. The City will reimburse for Economy or Coach Fare only. Receipts detailing each airfare are required.

- **Meals**: Meals will be reimbursed at the Federal Per Diem daily rate for the city in which the work is performed and do not require receipts or additional documentation. The City will not reimburse for alcohol at any time.

- **Lodging**: Lodging will be reimbursed at actual cost incurred up to a maximum of the published Runzheimer Cost Index for the city in which the work was performed. Receipts detailing each day/night lodging are required. The City will reimburse at the single occupancy rate. As an alternative, lodging billed at the published Federal Per Diem daily rate for the city in which the work is performed does not require receipts or additional documentation. In this case, the invoice needs to state that "the lodging is being billed at the Federal Per Diem daily rate."

- **Vehicle mileage**: Vehicle mileage will be reimbursed at the Federal Internal Revenue Service Standard Business Mileage Rate in affect at the time the mileage expense is incurred (currently that rate is 48.5 cents per mile.)

- **Rental Car**: Rental car expenses will be reimbursed at the actual cost of the rental. Rental car receipts are required for all rental car expenses (the City will only pay for the rental of "Compact" vehicles unless three or more persons are sharing one vehicle in which case a "Mid-sized" vehicle rental is acceptable).

- **Miscellaneous Travel** (e.g. parking, gas, taxi, shuttle, tolls, ferry fees, etc.): Miscellaneous travel expenses will be reimbursed at the actual cost incurred. Receipts are required for each expense of $10.00 or more.

The City will reimburse the Consultant <u>at actual cost</u> for travel expenses incurred as evidenced by copies of receipts supporting such travel expenses, and in accordance with the City of Seattle Travel Policy, details of which can be provided upon request.

6.3 Disputed Work.
Notwithstanding all above, if Seattle believes in good faith that some portion of Work has not been completed satisfactorily per the Warranty provisions, Seattle may require Contractor to correct such work prior to Seattle payment. In such event, Seattle will provide to Contractor an explanation of the concern and the remedy that Seattle expects. Seattle may withhold from any payment that is otherwise due, an amount that Seattle in good faith finds to be under dispute, or if the Contractor does not provide a sufficient remedy, Seattle may retain the amount equal to the cost to Seattle for otherwise correcting or remedying the work not properly completed.

7. Taxes, Fees and Licenses.

A. Taxes: Where required by State statute, ordinance or regulation, Contractor shall pay for and maintain in current status all taxes (other than taxes that Seattle is responsible for and has agreed to pay as specified herein) that are necessary for contract performance. Unless otherwise indicated, Seattle agrees to pay State of Washington sales or use taxes on all applicable consumer services and materials purchased. No charge by the Contractor shall be made for federal excise taxes and Seattle agrees to furnish Contractor with an exemption certificate where appropriate.

B. Fees and Licenses: Contractor shall pay for and maintain in a current status, any license fees, assessments, permit charges, etc., which are necessary for contract performance. It is the Contractor's sole responsibility to monitor and determine any changes or the enactment of any subsequent requirements for said fees, assessments, or charges and to immediately comply with said changes during the entire term of this Contract. Contractor must pay all custom duties, brokerage or import fees where applicable as part of the contract price. Contractor shall take all necessary actions to ensure that materials or equipment purchased are expedited through customs.

C. Supplier is to calculate and enter the appropriate Washington State and local sales tax on the invoice as applicable. Tax is to be computed on new items after deduction of any trade-in, in accordance with WAC 458-20-247.

8. Timely Completion

A. Reasonable Efforts.
The City has an immediate need to implement the System because it is critical to the management and operation of the City. OSIsoft will use all commercially reasonable efforts to ensure performance as outlined in the Scope of Work and OSIsoft Proposal # 4000006533-7, attached hereto as **Exhibit A** and **Exhibit B**.

9. License for Use
9.1 License Grant. Subject to the terms and conditions of this Agreement, Contractor grants to the City a perpetual nonexclusive, nontransferable license to use in accordance with **Exhibit C** the OSIsoft products and related documentation ordered and paid for by the City as specified herein (the "*OSIsoft Products*"). The City may make a reasonable number of copies of any OSIsoft Product documentation for internal business use.

9.2 **License Restrictions**. Except as expressly provided in **Exhibit C** the City agrees that it has no right to: (i) modify the OSIsoft Products or to permit any third party to do so; (ii) copy the OSIsoft Products, except as strictly required to install the OSIsoft Software and make a reasonable number of copies for archival or backup purposes, or (iii) use the OSIsoft Products to provide service-bureau, software rental, time-sharing or any data services to any third party. Any OSIsoft Products ordered by the City and licensed by Contractor as a bundled unit must be used by the City as a bundled unit. The City acknowledges that OSIsoft Products contain trade secrets of OSIsoft, and in order to protect such trade secrets, the City agrees not to disassemble, decompile or reverse engineer the OSIsoft Products, nor permit any third party to do so, except to the extent such restrictions are prohibited by applicable law.

9.3 **Limited Rights**. The City's rights in the OSIsoft Products will be limited to those expressly granted in this Section 9, and Contractor reserves all other rights, title, interest and licenses therein. All OSIsoft Products provided to the U.S. Government pursuant to solicitations issued on or after December 1, 1995 is provided with the commercial license rights and restrictions described in this Agreement. All OSIsoft Products provided to the U.S. Government pursuant to solicitations issued prior to December 1, 1995 is provided with "Restricted Rights" as provided for in FAR, 48 CFR 52.227-14 (JUNE 1987) or DFAR, 48 CFR 252.227-7013 (OCT 1988), as applicable.

9.4. **Audit Rights**. Upon Contractor's written request, the City shall furnish Contractor with a certification signed by an officer of the City or an appropriate City official verifying that the OSIsoft Products are being used pursuant to the terms of this Agreement. In addition, upon prior written notice, the Contractor may audit the City's use of the OSIsoft Products to ensure that the City is in compliance with the terms of this Agreement. Any such audit shall be conducted during regular business hours at City's facilities and shall not unreasonably interfere with City's business activities. The City shall provide Contractor with access to the relevant City records and facilities. If an audit reveals that the City has underpaid fees to Contractor, the City shall be invoiced for such underpaid fees based on Contractor's price list in effect at the time the audit is completed. The City shall promptly deliver to Contractor any unpaid fee for any errors or omissions disclosed by such audit. The City shall pay Contractor an additional fee of twenty-five percent (25%) of the applicable unpaid fee disclosed by the audit to compensate for the City's over use of the OSIsoft Products. If the underpaid fees exceed five percent (5%) of the license fees previously paid by the City, then the City shall also pay OSIsoft's reasonable costs of conducting the audit.

10. Warranties

10.1 Limited Warranty-- Products

Contractor warrants that, for a period of one (1) year after delivery of the OSIsoft Products, the OSIsoft Products will function in accordance with OSIsoft's accompanying documentation in all material respects. As the City's sole and exclusive remedy and Contractor's entire liability for any breach of the foregoing warranty, Contractor will repair or replace, at no additional charge to the City, any OSIsoft Products that fail to meet this limited warranty. The limited warranty set forth herein shall automatically become null and void if a party other than Contractor modifies the OSIsoft Products in any way. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, OSIsoft MAKES NO WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED, AND CONTRACTOR'S EXPRESSLY DISCLAIMS ANY AND ALL SUCH OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT AND NONINFRINGEMENT.

10.2 Limited Warranty-- Services

Contractor warrants, that for **a period of 90-days** after the services are performed that the results of such services will comply with mutually agreed upon specifications and that the services shall be performed in a timely and professional manner by qualified professional personnel During this warranty period, Contractor shall re-perform such services at no additional cost to the City.

10.3 Warranty Against Planned Obsolescence

The Contractor warrants that,as of the date of this Agreement, it has no current plans for announcing a replacement line that would be marketed by Contractor as a replacement for any of the products provided to the City under this Contract and would result in reduced support for the product line furnished to the City. The Contractor further warrants that for so long as the City pays Contractor's applicable Software Reliance Program fees, Contractor will provide the City with the services and any replacement products as specified in **Exhibit D**.

10.4 No Surreptitious Code Warranty

The Contractor warrants to the City that Contractor has not placed in any copy of the licensed Software provided to the City any Self-help Code or any Unauthorized Code as defined below. This warranty is referred to in this Contract as the "No Surreptitious Code Warranty."

As used in this Contract, "Self-help Code" means any back door, time bomb, drop dead device, or other Software routine developed by Contractor that is designed to disable a computer program automatically with the passage of time or under the positive control of Contractor. The term "Self-help Code" does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support. The term "Self-help Code" does not include timeout dates included on any trial or demonstration software or any license key mechanism disclosed in the Documentation.

As used in this Contract, "Unauthorized Code" means any "virus," "Trojan horse," "worm" or other Software routines or Equipment components developed by Contractor that is designed to permit unauthorized access to disable, erase, or otherwise harm Software, Equipment, or data or to perform any other actions. The term Unauthorized Code does not include Self-help Code.

10.5 Corporate Power and Authority

The Contractor warrants that, as of the date of this Agreement, it has full corporate power and authority to grant the rights granted by this Contract to the City without the consent of any other person or entity.

10.6 No Liens

The Contractor warrants that, as of the date of this Agreement, the Software is not subject to any lien, claim or encumbrance inconsistent with any of the City's rights under this Contract.

10.7 Services Warranty

Any preparation Software or data analysis used in the Services shall be available to the City for a period of one (1) year following the completion of the Services. This warranty shall apply only to preparation Software or data analysis exclusively owned by or that Contractor has the right to provide to the City.

10.8 Merchantability and Fitness Warranty

Contractor represents and warrants that the Software and Software Documentation will conform with the specifications agreed to or stated in Contractor's response to the City's RFP.

10.9 Compliance with Applicable Law

The Contractor warrants that, as of the date of this Agreement, Contractor's software, and the manufacture and production thereof, are in compliance with any and all applicable laws, rules, and regulations.

10.10 Survival of Warranties and Representations

To the extent applicable, the representations and warranties of the Contractor made pursuant to this Contract shall survive the delivery of Contractor's software, the payment of the purchase price, and the expiration or earlier termination of this Contract for the remaining applicable duration of the term of such representations and warranties.

11. Risk of Loss, Freight, Overages or Underages.

Regardless of FOB point, Contractor agrees to bear all risks of loss, injury, or destruction of goods and materials ordered herein which occur prior to delivery and acceptance. Such loss, injury, or destruction shall not release Contractor from any obligations under. Prices include freight prepaid and allowed. Contractor assumes the risk of every increase, and receives the benefit of every decrease, in delivery rates and charges. Shipments shall match the Work Order; any unauthorized advance or excess shipment is returnable at Contractor's expense.

12. Protection of Persons and Property

12.1 Property

The Contractor shall take reasonable steps to protect the City's property from injury or loss arising in connection with the Contractor's performance or failure of performance under this Contract.

12.2 Persons

The Contractor and the City shall each take reasonable precautions for the safety of employees of the other, and shall each comply with all applicable provisions of federal, state, and local laws, codes and regulations to prevent or avoid any accident or injury to a person on, about or adjacent to any premises where work under this Contract is being performed.

12.3 Cleaning Up

The Contractor shall ensure that project work sites are maintained in a clean and orderly fashion. Immediately after completion of the work contemplated in this Contract, the Contractor shall clean up and remove all refuse and unused materials resulting from such work as applicable. Upon the Contractor's failure to complete such clean-up and removal activity within twenty-four (24) hours after having been notified in writing by the City of the Contractor's obligation to complete such activity, the clean-up and removal activity may be done by one or more other parties at the direction of the City. The cost of all such clean-up and removal activity performed by a person or entity other than the Contractor shall be charged to the Contractor or deducted from any payment due to the Contractor.

12.4 No Smoking

The Contractor shall not allow any employee of the Contractor or any subcontractor or agent thereof to smoke inside any City facility.

12.5 OSHA/WISHA

The Contractor certifies that it is in compliance with the conditions of the Federal Occupational Safety and Health Act of 1970 (OSHA), the Washington Industrial Safety and Health act of 1973 (WISHA), and the standards and regulations issued there under and certifies that all items furnished or purchased under this Contract will conform to and comply with said standards and regulations. The Contractor shall indemnify, defend, and hold the City harmless from all damages assessed against the City as a result of the Contractor's failure to comply with the OSHA and WISHA and the standards issued there under and for the failure of any of the items furnished to the City under this Contract to so comply.

13.5 North American Electric Reliability Corporation, Electric Reliability Organization, Critical Infrastructure Protection Standards Compliance

The Contractor shall ensure that any employee who is required to have access to the City's

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System Control Center facility in order to fulfill contractual obligations has been assessed by the Contractor as required by North American Electric Reliability Corporation (NERC) (the Electric Reliability Organization) Critical Infrastructure Compliance (CIP) Standard CIP-004-1 R3.1.

14. Contract Notices and Deliverables

Official Contract notices shall be delivered to the following addresses (or such other address(es) as either party may designate in writing):

City of Seattle:

If delivered by the U.S. Postal Service, it must be addressed to:

Michael Mears
City of Seattle Purchasing and Contracting Services
PO Box 94687
Seattle, WA 98124-4687

If delivered by any other company, it must be addressed to:

Michael Mears
City of Seattle Purchasing and Contracting Services
Seattle Municipal Tower
700 5th Ave., #4112
Seattle, WA 98104-5042

Phone: 206-684-4570
Fax: 206-233-5155
E-Mail: michael.mears@seattle.gov

All deliverables shall be sent to the City Project Manager:

Jim Hansen
Seattle City Light – System Control
614 NW 46th St
Seattle, WA 98107

Phone: 206-706-0165
Fax: 206-706-0183
E-Mail: james.hansen@seattle.gov

OSIsoft:

All notices must be addressed to:

Roger Kammerer
OSIsoft, Inc.
777 Davis St., Ste. 250
San Leandro, CA 94577

Phone: 425-201-5917
Fax: 425-201-5940
E-mail: rkammerer@osisoft.com

15. Representations.

Contractor represents and warrants that it has the requisite training, skill and experience necessary to provide Work and is appropriately accredited and licensed by all applicable agencies and governmental entities.

16. Independent Contractor.

It is the intention and understanding of the Parties that Contractor shall be an independent contractor and that Seattle shall be neither liable for nor obligated to pay sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax that may arise as an incident of employment. Subject to the City's obligation to pay certain taxes as specified in Section 7 (Taxes, Fees and Licenses), Contractor shall pay all income and other taxes as due. Industrial or other insurance that is purchased for the benefit of the Contractor shall not be deemed to convert this Contract to any employment contract. It is recognized that Contractor may or will be performing professional Work during the term for other parties and that Seattle is not the exclusive user of the Work that Contractor will provide.

17. Inspection.

The Work shall be subject, at all times, to inspection by and with approval of Seattle, but the making (or failure or delay in making) such inspection or approval shall not relieve Contractor of responsibility for performance of the Work in accordance with this Contract, notwithstanding Seattle's knowledge of defective or noncomplying performance, its substantiality or the ease of its discovery.

18. Affirmative Efforts for Utilization of Women and Minority Subcontracting, Non discrimination in providing services

A. Employment Actions: Contractor shall not discriminate against any employee or applicant for employment because of race, religion, creed, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual orientation, gender identity, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to employment, upgrading, promotion, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training.

B. In accordance with Seattle Municipal Code Chapter 20.42, Contractor shall actively solicit the employment and subcontracting of women and minority group members when necessary and commercially useful for purposes of fulfilling the scope of work required for this Contract. Contractors shall actively solicit subcontracting bids from subcontractors as needed to perform the work of this contract, from qualified, available and capable women and minority businesses. Contractors shall consider the grant of subcontracts to women and minority bidders on the basis of substantially equal proposes in the light most favorable to women and minority businesses. At the request of Seattle, Contractor shall promptly furnish evidence of the Contractor's compliance with these requirements.

C. If upon investigation, the Director of Executive Administration finds probable cause to believe that the Contractor has failed to comply with the requirements of this Section, the Contractor shall notified in writing. The Director of Executive Administration shall give Contractor an opportunity to be heard, after ten calendar days' notice. If, after the Contractor's opportunity to be heard, the Director of Executive Administration still finds probable cause, s/he may suspend the Contract and/or withhold any funds due or to become due to the Contractor, pending compliance by the Contractor with the requirements of this Section.

D. Any violation of the mandatory requirements of this Section, or a violation of Seattle Municipal Code Chapter 14.04 (Fair Employment Practices), Chapter 14.10 (Fair Contracting Practices), Chapter 20.45 (City Contracts – Non-Discrimination in Benefits), or other local, state, or federal

non-discrimination laws, shall be a material of contract for which the Contractor may be subject to damages and sanctions provided for by the Vendor Contract and by applicable law. In the event the Contractor is in violation of this Section shall be subject to debarment from City contracting activities in accordance with Seattle Municipal Code Section 20.70 (Debarment).

19. Equal Benefits.

A. <u>Compliance with SMC Ch. 20.45</u>: The Contractor shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which the Contractor is obligated to provide the same or equivalent benefits ("equal benefits") to its employees with domestic partners as the Contractor provides to its employees with spouses. At Seattle's request, the Contractor shall provide complete information and verification of the Contractor's compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract. (For further information about SMC Ch. 20.45 and the Equal Benefits Program Rules call (206) 684-0430 or review information at http://cityofseattle.net/contract/equalbenefits/.)

B. <u>Remedies for Violations of SMC Ch. 20.45</u>: Any violation of this Section shall be a material breach of Contract for which the City may:

    a. Require the Contractor to pay actual damages for each day that the Contractor is in violation of SMC Ch. 20.45 during the term of the Contract; or

    b. Terminate the Contract; or

    c. Disqualify the Contractor from bidding on or being awarded a City contract for a period of up to five (5) years; or

    d. Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder.

20. General Legal Requirements.

A. <u>General Requirement</u>: Contractor, at no expense to Seattle, shall comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof where applicable. Without limiting the generality of this paragraph, the Contractor shall specifically comply with the following requirements of this section.

C. <u>Licenses and Similar Authorizations</u>: Contractor, at no expense to Seattle, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof where applicable.

D. <u>Performance Standard</u>. All duties by Contractor or designees shall be performed in a manner consistent with accepted practices for other similar Work.

E. <u>Use of Recycled Content Paper</u>: Contractors are to duplex all materials that are prepared for the City under this Contract, whether such materials are printed or copied, except when impracticable to do so due to the nature of the product being produced. Contractors are to use 100% post consumer recycled content, chlorine-free paper in such products that are produced for the City, whenever practicable, and to use other paper-saving and recycling measures in business they conduct with and for the City. This directive is executed under the Mayor's Executive Order, issued February 13, 2005.

F. <u>Americans with Disabilities Act</u>: Contractor shall comply with all applicable provisions of

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the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Contract. In particular, if the Contractor is providing services, programs or activities to Seattle employees or members of the public as part of this Contract, the Contractor shall not deny participation or the benefits of such services, programs, or activities, to people with disabilities on the basis of such disability. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.

G.   <u>Fair Contracting Practices Ordinance</u>: Contractor shall comply with the Fair Contracting Practices Ordinance of Seattle of Seattle (Ordinance 119601), as amended. Conduct made unlawful by that ordinance constitutes a breach of contract. Engaging in an unfair contracting practice may also result in the imposition of a civil fine or forfeiture under the Seattle Criminal Code as well as various civil remedies.

21. Indemnification for Services

Contractor shall protect, defend, indemnify and hold the City harmless from and against all third party claims, demands, damages, costs, actions and causes of actions, liabilities, judgments, expenses and attorney fees, resulting from the injury or death of any person or the damage to or destruction of property directly arising from the installation services performed negligently by Contractor under this Contract, or the Contractor's violation of any law, ordinance or regulation in performing such services, except for damages resulting from the sole negligence of the City. As to the City of Seattle, the Contractor waives any immunity it may have under RCW Title 51 or any other Worker's Compensation statute. The parties acknowledge that this waiver has been negotiated by them, and that the contract price reflects this negotiation.

22. Indemnification for Infringement

22.1   **Contractor's Obligation.** Contractor will defend any action brought against the City to the extent that it is based upon a claim that the OSIsoft Products infringe any U.S. patent, copyright or trade secret, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are finally awarded or paid in settlement in any such action, provided that: (i) the City promptly notifies OSIsoft in writing of the claim; (ii) the City grants Contractor sole control of the defense and settlement of the claim; and (iii) the City provides Contractor with all assistance, information and authority reasonably required for the defense and settlement of the claim, at OSIsoft's expense.

22.2   **Injunction.** If the City's use of any of the OSIsoft Products hereunder is, or in Contractor's opinion is likely to be, subject to the type of infringement claim specified in Section 22.1, Contractor shall, at the the City's option and at Contractor expense: (i) procure for the City the right to continue using such OSIsoft Products, as applicable under the terms of this Agreement; (ii) replace or modify such OSIsoft Products so that it is non-infringing, but retains substantially the same functionality; or (iii) if options (i) and (ii) above cannot be accomplished despite Contractor's reasonable efforts, then Contractor may terminate the City's rights and Contractor's obligations hereunder with respect to such OSIsoft Products and refund to Licensee the unamortized portion of the fees paid for such OSIsoft Products, based upon a straight-line three (3) year depreciation commencing as of the date Licensee received such OSIsoft Products.

22.3   **Indemnity Exclusions.** Contractor will have no liability for infringement claims of any kind arising from: (i) any use of the OSIsoft Products beyond the scope of this Agreement; (ii) City's use of the OSIsoft Products in combination with any products not developed by OSIsoft, if the basis for the claim is such combined use; (iii) City's failure to use updated or modified versions of the OSIsoft Products provided or made available by Contractor without additional charge; or (iv) OSIsoft's compliance with designs or specifications provided by Licensee. THE PROVISIONS OF THIS SECTION 22 SET FORTH Contractor's SOLE AND EXCLUSIVE OBLIGATIONS AND THE CITY'S SOLE

AND EXCLUSIVE REMEDIES WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

24. Insurance.

Upon award of the contract, Contractor shall, at its sole expense and for the entire term of the contract, maintain in force minimum coverages and limits of liability of insurance as specified below or the City may withdraw its intent to award:

(1)   Commercial General Liability (CGL) Insurance including Premises/Operations, Products/Completed Operations, Personal/Advertising Injury, Contractual, Independent Contractors, Fire/Tenant Legal and Stop Gap/Employers Liability with minimum limits of liability of $ 1,000,000 each Occurrence Combined Single Limit Bodily Injury and Property Damage except:

$ 1,000,000	Each Offense Personal/Advertising Injury
$ 100,000	Each Occurrence Fire Damage/Tenant Liability
$2,000,000	Products/Completed Operations Aggregate
$2,000,000	General Aggregate
$1,000,000	Each Accident/ Disease-Policy Limit/ Disease-Each Employee Stop Gap (may be covered under Part B "Employers Liability" of a Workers Compensation insurance policy where applicable)

(2)   Automobile Liability insurance, including coverage as required for non-owned, or hired vehicles as appropriate, with a minimum limit of liability of $1,000,000 each occurrence combined single limit bodily Injury and property damage.

Terms and Conditions of Required Insurance.

(1)   CITY OF SEATTLE AS ADDITIONAL INSURED: The CGL and Business Automobile liability insurance shall include the City of Seattle as an additional insured for primary and non-contributory limits.

(2)   NO LIMITATION OF LIABILITY: Insurance coverage and limits of liability as specified herein are minimum coverage and limit of liability requirements only. Moreover, the City shall be an additional insured, where additional insured status is required, for the full available limits of liability maintained by Contractor, whether those limits are primary, excess, contingent or otherwise.

(3)   CLAIMS MADE FORM: If any policy is written on a claims made form, the retroactive date shall be prior to or coincident with the effective date of this contract. Claims made coverage shall be maintained by the Contractor for a minimum of three (3) years following the expiration or earlier termination of this contract, and the Contractor shall provide the City with evidence of insurance for each annual renewal. If renewal of the claims made form of coverage becomes unavailable or economically prohibitive, the Contractor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the City to assure financial responsibility for liability assumed under the contract.

(4)   REQUIREMENT FOR WORKERS COMPENSATION INSURANCE: The State of Washington is a monopolistic state where organizations are required to purchase workers' compensation insurance from the state unless they are an authorized self-insurer. The Contractor shall insure its liability for industrial injury to its employees in accordance with the provisions of RCW 51. The Contractor shall also be responsible for Workers' Compensation Insurance for any sub-Contractor or subcontractor that provides services under the contract. If the Contract requires working on or around a navigable waterway, the Contractor shall secure United States Longshore and Harbor Workers (USL&H) coverage and coverage for Jones Act (Marine Employers Liability) in compliance with Federal Statutes.

(5)   DEDUCTIBLES AND SELF-INSURED RETENTIONS: Any self-insurance program or any deductible in excess of $ $10,000 must be disclosed and is subject to approval by the City's Risk Management Division. Should the Contractor be self-insured, Contractor shall state in writing that it will protect and defend the City as an additional insured within its self-insured layer and advise to whom a tender of a claim should be directed.

(6)   NOTICE OF CANCELLATION: Under RCW 48.18.290 (1) (a) and (b) ("Cancellation by insurer") applicable to insurers licensed to do business in the State of Washington, the City, as a certificate holder for the insurance requirements specified herein and an additional insured, has an interest in any loss which may occur; written notice of cancellation must therefore be actually delivered or mailed to the City not less than 45 days prior to cancellation (10 days as respects non-payment of premium). As respects surplus lines placements, written notice of cancellation shall be delivered not less than 30 days prior to cancellation (10 days as respects non-payment of premium). Such notice shall be delivered to the City by mail, fax or electronic transmission (see delivery addresses in Section 1.15.3 below).

(7)   QUALIFICATION OF INSURERS: Insurers shall maintain A.M. Best's ratings of A- VII unless procured as a surplus lines placement under RCW chapter 48.15, or as may otherwise be approved by the City.

(8)   CHANGES IN INSURANCE REQUIREMENTS: The City shall have the right to periodically review the adequacy of coverages and/or limits of liability in view of inflation and/or a change in loss exposures and shall have the right to require an increase in such coverages and/or limits upon ninety (90) days prior written notice to the Contractor. Should Contractor, despite its best efforts, be unable to maintain any required insurance coverage or limit of liability due to deteriorating insurance market conditions, it may upon thirty (30) days prior written notice request a waiver of any insurance requirement, which request shall not be unreasonably denied.

Evidence of Required Insurance

Contractor shall cause its insurance broker or agent to provide the following insurance certification:

- A Certificate of liability insurance evidencing coverages, limits of liability and other terms and conditions as specified herein, and
- An attached additional insured endorsement or blanket additional insured wording to the CGL insurance policy.

At any time upon the City's request, Contractor shall also cause to be furnished a copy of declarations pages and schedules of forms and endorsements to all policies or a full and certified copy of policies.

Evidence of required insurance shall be delivered to the City Buyer.

25. Audit.

Upon request, Contractor shall permit Seattle, and any other governmental agency involved in the funding of the Work ("Agency"), to inspect and audit all pertinent books and records of Contractor, any subcontractor, or any other person or entity that performed work in connection with or related to the Work, at any and all times deemed necessary by Seattle or Agency, including up to six years after the final payment or release of withheld amounts has been made under this Contract. Such inspection and audit shall occur in San Leandro, California or other such reasonable location as Seattle and Contractor selects. The Contractor shall supply Seattle with, or shall permit Seattle to make, a copy of any books and records and any portion thereof. The Contractor shall ensure that such inspection, audit and copying right of Seattle and Agency is a condition of any

subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work under this Contract.

26. Contractual Relationship

The relationship of Contractor to Seattle by reason of this Contract shall be that of an independent contractor. This Contract does not authorize Contractor to act as the agent or legal representative of Seattle for any purpose whatsoever. Contractor is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of Seattle or to bind Seattle in any manner or thing whatsoever.

27. Assignment and Subcontracting

Contractor shall not assign or subcontract any of its obligations under this Contract without Seattle's written consent, which may be granted or withheld in Seattle's sole discretion. Any subcontract made by Contractor shall incorporate by reference all the terms of this Contract. Contractor shall ensure that all subcontractors comply with the obligations and requirements of the subcontract. Seattle's consent to any assignment or subcontract shall not release the Contractor from liability under this Contract, or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract.

28. Involvement of Former City Employees

Contractor shall promptly notify Seattle in writing of any person who is expected to perform any of the Work and who, during the twelve (12) months immediately prior to the expected commencement date of such work or subcontract, was a City officer or employee. Contractor shall ensure that no Work or matter related to the Work is performed by any person (employee, subcontractor, or otherwise) who was a City officer or employee within the past twelve (12) months; and as such was officially involved in, participated in, or acted upon any matter related to the Work, or is otherwise prohibited from such performance by SMC 4.16.075.

29. No Conflict of Interest.

Contractor confirms that Contractor does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the Contractor selection, negotiation, drafting, signing, administration, or evaluating the Contractor's performance.

30. Gratuities.

Contractor shall not directly or indirectly give, pay, deliver, or perform, or agree to arrange to give, pay, deliver or perform, any gratuity, gift, bonus, donation or discount of any kind, in the form of goods, services, or any other thing of value for any purpose, at any time, to any person employed by the City that is intended, or that reasonably may be seen to be intended, to benefit the Contractor by way of award, administration, or in any other way to influence the contract or any future contract. Any violation of this provision may result in termination of this Contract. Nothing in this Contract prohibits donations to campaigns for election to City office, so long as the donation is disclosed as required by the election campaign disclosure laws of the City and of the State.

31. Intentionally Omitted.

32. Confidentiality.

The parties agree that they will not permit the duplication or disclosure of any information designated in advance by the other party as "Confidential and Proprietary" to any person (other than its own employee, agent, or representative who must have such information for the performance of that party's obligations hereunder) unless such duplication, use or disclosure is specifically authorized in writing by the other party or is required by law. In addition, the receiving party will not use any Confidential Information of the other party except as expressly permitted herein and will use all reasonable measures to maintain the confidence of all such Confidential

Information, which measure will in no event be less than the measures that the receiving party takes to protect its own confidential information of similar importance. "Confidential and Proprietary" information does not include ideas, concepts, know-how or techniques related to information that, at the time of disclosure, is in the public domain unless the entry of that information into the public domain is a result of any breach of this Contract. Likewise, "Confidential and Proprietary" information does not apply to information that is independently developed, already possessed without obligation of confidentiality, or rightfully obtained from a third party without an obligation of confidentiality. Confidential Information will be designated as "confidential" or "proprietary" at the time of disclosure. Contractor's Confidential Information shall also include, without limitation, any interfaces developed using Contractor's Software. Notwithstanding anything herein to the contrary, Contractor will be free to incorporate into its products any features or functionality that may be suggested by the City.

Contractor's Understanding and Obligations

1. Contractor understands that any records (including but not limited to bid or proposal submittals, the Contract, and any other contract materials) it submits to Seattle, or that are used by Seattle even if the Contractor possesses the records, are public records under Washington State law, RCW Chapter 42.56. Public records must be promptly disclosed upon request unless a statute exempts them from disclosure. Contractor also understands that even if part of a record is exempt from disclosure, the rest of that record generally must be disclosed.

2. Contractor must separate and clearly mark as "proprietary information" all records related to this Contract or the performance of this Contract that the Contractor believes are exempt from disclosure. Contractor is to be familiar with potentially-applicable public-disclosure exemptions and the limits of those exemptions, and will mark as "proprietary only information that the Contractor believes legitimately fits within an exemption, and will state the statutory exemption upon which it is relying.

3. If Seattle notifies the Contractor of a public disclosure request, and the Contractor believes records are exempt from disclosure, it is the Contractor's responsibility to make its own determination and pursue a lawsuit under RCW 42.56 to enjoin disclosure. The Contractor must obtain the injunction and serve it on Seattle before the close of business on the tenth business day after Seattle sent notification to the Contractor. It is the Contractor's discretionary decision whether to file the lawsuit.

4. If Contractor does not timely obtain and serve an injunction, the Contractor is deemed to have authorized releasing the record.

5. Notwithstanding the above, the Contractor must not take any action that would affect (a) Seattle's ability to use goods and services provided under this Contract or (b) the Contractor's obligations under this Contract.

6. Contractor will fully cooperate with Seattle in identifying and assembling records in case of any public disclosure request.

Seattle's Obligations

1. Seattle will disclose those parts of records the Contractor has marked as "proprietary information" only to authorized persons unless:
> (a) Seattle receives a public disclosure request, in which case steps 2 and 3 below are exercised before release of the information; or
> (b) the Contractor has given Seattle express advance written permission to disclose the records.

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"Authorized persons" means those City officers, employees, contractors and consultants for whom the proprietary information is necessary to perform their duties or obligations to Seattle and who have entered into a written nondisclosure agreement, the terms of which are at least as restrictive as those contained herein. The term "proprietary information" does not include ideas, concepts, know-how or techniques related to any information that, at the time of disclosure, is in the public domain, unless the entry of that information into the public domain is a result of a breach of this Contract.

2.   If Seattle receives a public disclosure request for records that Contractor has marked as "proprietary information," Seattle will promptly notify the Contractor of the request. Seattle will postpone disclosing these records for ten business days after it has sent notification to the Contractor, in order to allow the Contractor to file a lawsuit under RCW 42.56 to enjoin disclosure. It is the Contractor's discretionary decision whether to file the lawsuit.

3. If Seattle has notified Contractor of a public disclosure request, and the Contractor has not obtained an injunction and served Seattle with that injunction by the close of business on the tenth business day after Seattle sent notice, Seattle may disclose the record.

4.   Seattle has no other obligations concerning records the Contractor has marked as "proprietary information" under this Contract. Seattle has no obligation to claim any exemption from disclosure. Seattle is not obligated or liable to the Contractor for any records that Seattle releases in compliance with this Section or in compliance with the order of a court of competent jurisdiction.

33. Publicity.

No news release, advertisement, promotional material, tour, or demonstration related to the City's purchase or use of the Contractor's product or any work performed pursuant to this Contract shall be produced, distributed or take place without the prior, specific approval of the City's Project Director or his/her designee.

34. Interlocal Agreement Act.

RCW Chapter 39.34 allows cooperative purchasing between public agencies, non profits and other political subdivisions. Public agencies that file an Intergovernmental Cooperative Purchasing Agreement with the City of Seattle may purchase from Contracts established by the City. The seller agrees to sell additional items at the bid prices, terms and conditions, to other eligible governmental agencies that have such agreements with the City. The City of Seattle accepts no responsibility for the payment of the purchase price by other governmental agencies. Should the Contractor require additional pricing for such purchases, the Contractor is to name such additional pricing upon Offer to the City.

35. Extra Work.

Seattle desires to have the Contractor perform work, render services in connection with this project other than that expressly provided for in the "Scope of Work" section of this Contract, or to extend the duration of the contract beyond that originally stated. This will be considered extra work, supplemental to this Contract and the Contractor shall not proceed unless authorized by an amendment mutually agreed to and executed by both parties. Any costs incurred due to the performance of extra work prior to execution of an amendment will not be reimbursed under this Contract or an amendment. Notwithstanding the foregoing, Seattle may propose reasonable changes in this Contract, including place of delivery, installation or inspection, the method of shipment or packing, labeling and identification, and ancillary matters that Contractor may accommodate without substantial additional expense to Seattle but such changes will not be binding on the parties unless the parties mutually agree in writing to such changes.

36. Key Persons.

Contractor shall not transfer or reassign any individual designated in this Contract as essential to the Work, without prior notice to Seattle. If, during the term of this Contract, any such individual leaves the Contractor's employment, the Contractor shall present to Seattle one or more individual(s) with greater or equal qualifications as a replacement, subject to Seattle's approval, which shall not be unreasonably withheld. Seattle's approval or disapproval shall not be construed to release the Contractor from its obligations under this Contract.

37. Dispute Resolution.

The parties shall endeavor to resolve any dispute or misunderstanding that may arise under this Contract concerning Contractor's performance, if mutually agreed to be appropriate, through negotiations between the Contractor's Project Manager and Seattle's Project Manager, or if mutually agreed, referred to the City's named representative and the Contractor's senior executive(s). Either party may discontinue such discussions and may then pursue other means to resolve such disputes, or may by mutual agreement pursue other dispute alternatives such as alternate dispute resolution processes. Nothing in this dispute process shall in any way mitigate the rights, if any, of either party to terminate the contract for cause or convenience.

38. Termination.

A.   For Cause: Either party may terminate this Contract if the other party is in material breach of any of the terms of this Contract, and such breach has not been corrected or cured within thirty (30) days after the party receives written notice from the other party of such breach.

B.   For City's Convenience: Seattle may terminate this Contract at any time, without cause and for any reason including Seattle's convenience, upon prior written notice to the Contractor.

C.   Nonappropriation of Funds: Seattle may terminate this Contract at any time without notice due to nonappropriation of funds, whether such funds are local, state or federal grants, and no such notice shall be required notwithstanding any notice requirements that may be agreed upon for other causes of termination.

D.   Acts of Insolvency: Seattle may terminate this Contract by written notice to Contractor if the Contractor becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or is wound up or liquidated, voluntarily or otherwise.

E.   Termination for Gratuities: Seattle may terminate this Contract by written notice to Contractor if Seattle finds that any gratuity in the form of entertainment, a gift, or otherwise, was offered to or given by the Contractor or any agent thereof to any City official, officer or employee.

F.   Notice: Excepting the provisions stated above, Seattle is not required to provide advance notice of termination. Notwithstanding, the City may issue a termination notice with an effective date later than the termination notice itself. In such case, the Contractor shall continue to provide products and services as required by the City until the effective date provided in the termination notice.

G.   Actions Upon Termination: In the event of termination not the fault of the Contractor, Contractor shall be paid for the services performed prior to the effective termination date that has been specified by the City, together with any reimbursable expenses then due, but in no event shall such compensation exceed the maximum compensation to be paid under the Contract. Contractor agrees that this payment shall fully and adequately compensate Contractor and all subcontractors for all profits, costs, expenses, losses, liabilities, damages,

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taxes, and charges of any kind whatsoever (whether foreseen or unforeseen) attributable to the termination of this Contract.

39. Force Majeure– Suspension and Termination.
This section applies in the event that either party is unable to perform the obligations of this contract because of a Force Majeure event as defined herein, to the extent that such Force Majeure event prevents a party's performance hereunder. A Force Majeure event is an event that prohibits performance and is beyond the control of the party. Such events may include but are not limited to natural or man-made disasters, or an action or decree of a superior governmental body, which prevents performance. This Section 39 will not apply to any obligation to make a payment hereunder.

Force Majeure under this Section shall only apply in the event that performance is prevented by either party or its agents. Should it be possible to provide partial performance that is acceptable to the City under Section 40 (Major Emergencies or Disasters) below, Section 40 shall instead apply.

Should either party suffer from a Force Majeure event and is unable to provide performance, such party shall give notice to the remaining party as soon as reasonably practical and shall use all commercially reasonable efforts to resume performance.

Upon receipt of such notice, the party shall be excused from such performance as is affected by the Force Majeure Event for the period of such Event. If such Event affects the delivery date or warranty provisions of this Agreement, such date or warranty period shall automatically be extended for a period equal to the duration of such Event.

40. Major Emergencies or Disasters: The City may undergo an emergency or disaster that may require the Contractor to either increase or decrease quantities from normal deliveries, or that may disrupt the Contractor's ability to provide normal performance. Such events may include, but are not limited to, a storm, high wind, earthquake, flood, hazardous material release, transportation mishap, loss of any utility service, fire, terrorist activity or any combination of the above. In such events, the following shall apply.

(a) The City shall notify the Contractor that the City is experiencing an emergency or disaster, and will request emergency and priority services from the Contractor.
(b) Upon such notice by the City, the Contractor shall provide to the City goods and/or services in the quantities and schedule specified by the City, following the conditions named in this Section.
(c) The Contractor shall use its best efforts to provide the requested goods and/or services to the City of Seattle in as complete and timely manner as possible. Such efforts by the Contractor are not to be diminished as a result of Contractor providing service to other customers.
(d) If the Contractor is unable to respond in the time and/or quantities requested by the City, the Contractor shall make delivery as soon as practical. The Contractor shall immediately assist the City to the extent reasonable, to gain access to such goods and/or services. This may include:
    a. Coordinating with other distributors or subsidiaries beyond those in the local region to fulfill order requests;
    b. Offering the City substitutions, provided the Contractor obtains prior approval from the City for such substitution.
(e) The Contractor shall charge the City the price determined in this Contract for the goods and services provided, and if no price has been determined, it shall charge the City a price that is normally charged for such goods and/or services (such as listed prices for items in stock). However, in the event that the City's request results in the Contractor incurring unavoidable additional costs and causes the Contractor to increase prices in order to obtain a fair rate of return, the Contractor shall charge the City a price not to exceed the cost/profit formula found in this Contract.

41. Debarment.

In accordance with SMC Ch. 20.70, the Director of Executive Administration or designee may debar a Vendor from entering into a Contract with the City or from acting as a subcontractor on any Contract with the City for up to five years after determining that any of the following reasons exist:

a. Contractor has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.

b. Contractor failed to comply with City ordinances or Contract terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, prevailing wage requirements, equal benefits, or apprentice utilization.

c. Contractor abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Contract.

d. Contractor failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.

e. Contractor submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Contract.

f. Contractor colluded with another contractor to restrain competition.

g. Contractor committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Contract for the City or any other government entity.

h. Contractor failed to cooperate in a City debarment investigation.

i. Contractor failed to comply with SMC 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, State, or federal non-discrimination laws.

The Director may issue an Order of Debarment following the procedures specified in SMC 20.70.050. The rights and remedies of the City under these provisions are in addition to any other rights and remedies provided by law or under the Contract.

42. Recycle Products Requirements.

Whenever practicable, Contractor shall use its best efforts to use reusable products, recyclable products and recycled-content products including recycled content paper on all documents submitted to the City. City also has the option to receive documentation from Contractor electronically when possible.

Contractors are to duplex all materials that are prepared for the City under this Contract, whether such materials are printed or copied, except when impracticable to do so due to the nature of the product being produced. Contractors are to use 100% post consumer recycled content, chlorine-free paper in such products that are produced for the City, whenever practicable, and to use other paper-saving and recycling measures in business they conduct with and for the City. This directive is executed under the Mayor's Executive Order, issued February 13, 2005.

43. Workers Right to Know.

"Right to Know" legislation required the Department of Labor and Industries to establish a program to make employers and employees more aware of the hazardous substances in their work environment. WAC 296-62-054 requires among other things that all manufacturers/distributors of hazardous substances, including any of the items listed on this ITB, RFP or contract bid and subsequent award, must include with each delivery completed Material Safety Data Sheets (MSDS) for each hazardous material. Additionally, each container of hazardous material must be appropriately labeled with: the identity of the hazardous material, appropriate hazardous warnings, and the Name and Address of the chemical manufacturer, improper, or other responsible party.

Labor and Industries may levy appropriate fines against employers for noncompliance and agencies may withhold payment pending receipt of a legible copy of the MSDS. OSHA Form 20 is not acceptable in lieu of this requirement unless it is modified to include appropriate information relative to "carcinogenic ingredients: and "routes of entry" of the product(s) in question.

44. **Software Reliance Program.** Subject to City's advance payment of the applicable Software Reliance Program fees Licensee will be enrolled in Contractor's then-current Software Reliance Program ("***Software Reliance Program***"). Contractor's current terms of their Software Reliance Program are attached hereto as **Exhibit D** and are also available through OSIsoft's description of services section at http://www.osisoft.com. Promptly following its use of any updates, bug fixes or other replacement software as designated by Contractor and accepted by the City ("***Replacement Software***"), the City will return or destroy the OSIsoft Software replaced by the Replacement Software. The City will not receive any credit for software replaced by Replacement Software.

45. **Miscellaneous Provisions.**

A. Amendments: The Parties hereto reserve the right to make amendments or modifications to this Contract by written Contract signed by an authorized representative of each party. No modification of this Contract shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.

B. Binding Contract: This Contract shall not be binding until signed by both parties. The provisions, covenants and conditions in this Contract shall bind the parties, their legal heirs, representatives, successors, and permitted assigns.

C. Applicable Law/Venue: This Contract shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.

D. Remedies Cumulative: Except as otherwise provided herein, the rights under this Contract are cumulative and nonexclusive of any other remedy at law or in equity.

E. Captions: The titles of sections or subsections are for convenience only and do not define or limit the contents.

F. Severability: If any term or provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

G. Waiver: No term or condition or breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed. Any waiver of the breach of any term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither acceptance by Seattle of Contractor performance nor payment to Contractor for any portion of work, shall constitute a waiver by Seattle of the breach or default of any term or condition unless expressly agreed to by Seattle in writing.

H. Entire Contract: This Contract and the attached Exhibits, constitutes the entire agreement between the City and the Contractor. The City's Request for Proposal Specification No. SCL-456 ("RFP"), the Addenda to the RFP; and the Contractor's Proposal submitted in response to the RFP are explicitly included as Supplements to this Contract. Where there is any conflict between or among these documents, the controlling document will first be this Contract, as

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amended, then the RFP and Addenda, and then the Contractor's Proposal. No verbal agreement or conversation between any officer, agent, associate or employee of Seattle and any officer, agency, employee or associate of the Contractor prior to the execution of this Contract shall affect or modify any of the terms or obligations contained in this Contract.

I. Negotiated Contract: The parties acknowledge that this is a negotiated Contract, that they have had the opportunity to have this Contract reviewed by their respective legal counsel, and that the terms and conditions of this Contract are not to be construed against any party on the basis of such party's draftsmanship thereof.

J. Attorneys' Fees: Subject to the indemnification provisions set forth in this Contract, if any action or suit is brought with respect to a matter or matters covered by this Contract, each party shall be responsible for all its own costs and expenses incident to such proceedings, including reasonable attorneys' fees.

K. Authority: Each party represents that it has full corporate power and authority to enter into and perform this Contract, and the person signing this Contract on behalf of each party has been properly authorized and empowered to enter into this Contract. Each party further acknowledges that it has read this Contract, understands it, and shall be bound by it.

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Contract by having their authorized representatives affix their signatures below.

OSIsoft, Inc.   **City of Seattle**

By _____ 10/26/07   By _____ 10/31/7
Signature   Ronald Kolz   Date   Signature   Date
Vice President of Sales North America
OSIsoft, Inc.
_____
(Printed Name)   NANCY LOCKE, Purchasing Manager

_____
Title

Exhibit A

Statement of Work

Overview

OSIsoft, in conjunction with SISCO, will provide on-site installation and configuration of high availability 10,000 Tag PI Enterprise servers that will interface to the SCL EMS system using ICCP. For the corporate user interface, OSIsoft will provide 52 PI Combo client packages and five BatchView clients.

System Architecture

OSIsoft and Sisco will deliver software and applicable licenses and provide on-site installation necessary to provide the configuration shown below:
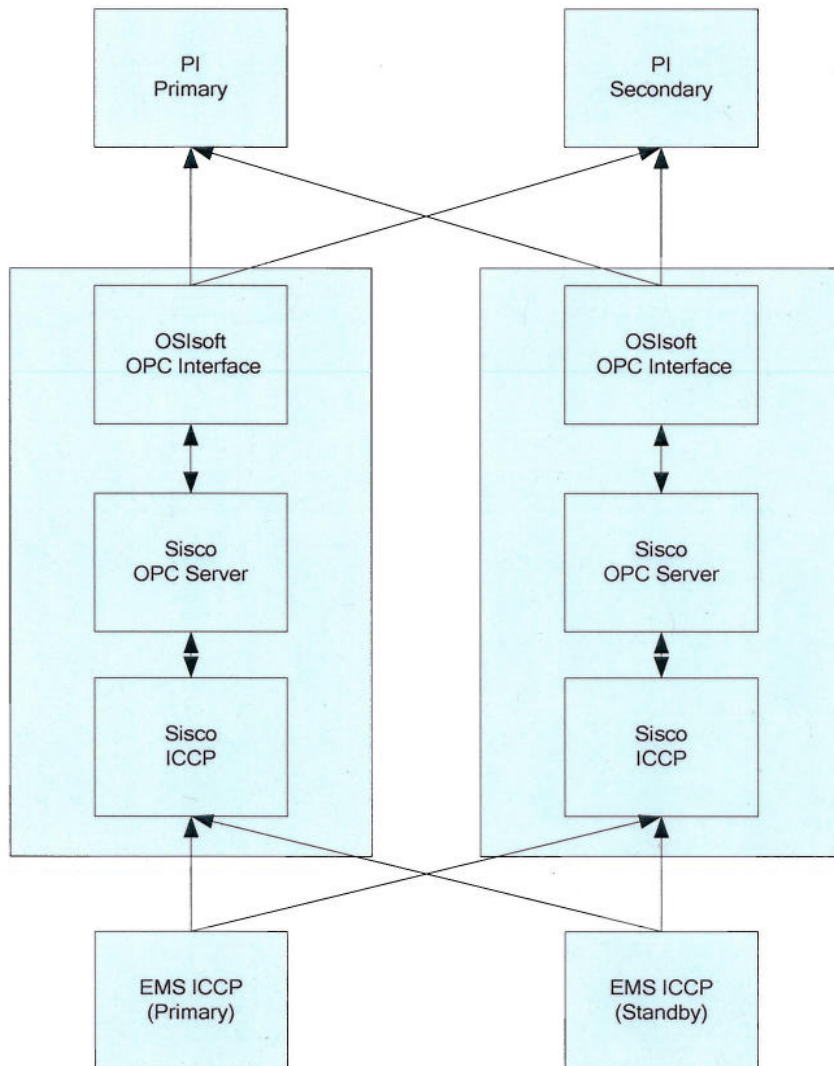
Hardware

Seattle City Light will provide four Dell servers, rack mounted, with one associated switch equipment, monitor, mouse, and keyboard. One GB 10 base-T network connections will also be provided. The Dell servers will meet at least the requirements prescribed by OSIsoft as being necessary to meet performance requirements. Two servers will be configured as "PI Servers" and two as "ICCP Servers".

PI Servers

OSIsoft will configure the PI Servers shown above in a High Availability configuration with 10,000 Tag High Availability PI Servers, PI Enterprise Servers, Server Applications Modules, Data Access Modules, and OPC interfaces. It is up to OSIsoft as to whether the OPC interfaces run on the PI servers or the ICCP servers. Both PI servers will be running continuously and continuously being updated with data. SCL may load balance users between the two systems by assigning half of the users to default to one node and half to the other. Users on a failed node shall be automatically switched to the online node in the event of a node failure.

The OPC interface failover must not require the ability to write back to the EMS ICCP servers. The EMS ICCP data access will be configured as read only.

Each OPC interface will continuously talk to both SISCO OPC servers and must automatically switch to the one that has current data in the event of failure of the other SISCO OPC server.

ICCP Servers

The SISCO ICCP nodes shall run both the secure SISCO ICCP implementation and SISCO OPC servers. OSIsoft or their assignees must configure the ICCP servers in high availability mode so that a failure on one system causes an automatic switch to the online system. SCL requires the ability to manually switch the online node to the standby node and vice versa. OSIsoft or their assignees must also, in cooperation with SCL staff, configure the ICCP servers to communicate with both of the EMS ICCP servers. The EMS ICCP servers are configured as on-line and standby nodes with either being in either mutually exclusive state. The ICCP servers should establish a single association with the online EMS ICCP server but may use an arbitrary number of data sets. The SISCO ICCP servers shall be configured to establish the association.

In 2008, SCL will be required to implement "secure ICCP". The SISCO ICCP servers must support secure ICCP so that SCL can implement SSL on the SISCO ICCP servers when the EMS ICCP systems implement SSL. The secure ICCP implementation must be compliant with any applicable (or cited) Western Electricity Coordinating Council Data Exchange Working Group standards or guidelines.

PI Data Corporate Client Interfaces

OSIsoft will provide 52 PI Combo Packages consisting of PI ProcessBook and PI Datalink. OSIsoft will also provide five BatchView Client packages.

Installation and Configuration

OSIsoft or their assignees will provide 4 days of installation and configuration services. Seattle City Light will reimburse OSIsoft for actual travel and living expenses.

Training

OSIsoft will provide three days of on-site training for up to 12 PI Client users. Seattle City Light will reimburse OSIsoft for actual travel and living expenses.

OSIsoft will provide four technical support and administration classroom training sessions.

Maintenance, Support and License Terms

Seattle City Light will purchase five (5) years of 7x24 support and software maintenance for the OSIsoft Software as outlined in the Agreement. The terms of support, maintenance and software license terms for the Sisco software will be governed by Sisco's license agreement.

Pricing

OSIsoft and SISCO will provide the software and services described herein for $328,840.00 USD. Actual travel and living expenses will be paid by Seattle City Light at actual cost for installation and training services however an estimate of $5,000 is included in the bid.

This price includes $290,640 for OSIsoft Software, services, and five years of 7x24 maintenance and support, $33,700 for SISCO secure ICCP and five years of maintenance and support, and $4,500 for SISCO product installation.

Proposal

Date:	09/07/2007	**Requestor:**	Jim Hansen
			206 706 0165
			James.Hansen@Seattle.Gov
Seller:	OSIsoft, Inc.	**Sold to:**	City of Seattle
Proposal type:	Final		700 5TH AVE STE 3300
Sales Representative:	Ron Kolz		SEATTLE WA 98104-5031 US
Proposal No:	4000006533-7	**Ship to:**	City of Seattle
			700 5TH AVE STE 3300
			SEATTLE WA 98104-5031 US
		Your Reference:	
		Bill to:	City of Seattle
			700 5TH AVE STE 3300
			SEATTLE WA 98104-5031 US
SLA Number:	\<TBA>	**Delivery Method:**	Shipment
Licensee Name:	CITY OF SEATTLE - LIGHT DIVISION (DBA SEATTLE		
SRP Expiration:	09/30/2012	**Terms:**	Net due in 30 days
Proposal valid from:	09/07/2007	**Valid to:**	11/07/2007

Introduction

Proposal Number: 4000006533-7
Requestor: Jim Hansen
Site: City of Seattle Seattle CIty Light
Description of Proposal: 10,000-Tag PI Installation for Seattle City Light

Software and Service Scope includes:
- 10,000-Tag High Availability PI Server - PI Enterprise Server, Server Applications Module and Data Access module (first instance of HA is free), and one OPC interface
- (52) PI Combo Client Packages - Each Package includes PI ProcessBook and PI DataLink (Shipping Note - For client orders of (5) or more, (5) copies of physical media will be shipped, unless otherwise specifically noted on your Purchase Order. Licensed copies will be the total number ordered - i.e. (52) in this case). - (5) BatchViews Clients
- (5) years Software Reliance Program (SRP) Services and Benefits

- On-Site System Installation Services, specifics as described further in this quotation. (Travel & Living Expenses are additional, estimated in this quotation at $2500, but will be invoiced at actual incurred cost.)
- Classroom-Based Training - PI System Manager I: Essential Skills, for (4) Students - Once a Purchase Order number has been generated, each students should register at http://training.osisoft.com/ for their specific class. The registration form provides a field to enter Payment Method = Purchase Order and a field to enter the Purchase Order number. Please either forward the Confirmation Numbers received by each student to OSIsoft - or note these directly on your Purchase Order.

- On-Site Client Training (3 days), limited to a maximum of 12 students, specifics as described further in this quotation.   (Travel & Living Expenses are additional, estimated in this quotation at $2500, but will be invoiced at actual incurred cost.)

* The OSIsoft OPC Interface will be supplied in conjunction with SISCO#s AX-S4 ICCP OLE for Process Control plug-in access to ICCP-TASE.2 client and server functions for blocks 1, 2, 4 and 5 of IEC60870-6-TASE.2 to any Windows 2000/XP application supporting an OPC client interface. The SISCO OPC Server for ICCP is purchased separately from SISCO. SISCO is a partner company of OSIsoft. Their quote for the AX-S4 ICCP is

attached as a courtesy. Complete details and specifications are provided in the SISCO quote.

LEGAL NOTE - A Software License Agreement shall be in place in order to process any purchase order. The indicated Licensee is "CITY OF SEATTLE", doing business as SEATTLE CITY LIGHT. If this is not the correct Licensee designation (i.e. - this is not the intended End User or the entity placing a Purchase Order against this quotation, please notify OSIsoft immediately, advising of the proper Licensee designation.

Pricing

Total Price: 290,640.00 USD

Organization: Seattle City Light
End User Site: City of Seattle Seattle CIty Light

Software Components				
Quantity	**Unit**	**Description**	**List Price (Unit)**	**Total Price (USD)**
		PI Client Applications		**51,740.00**
52	EA	ComboPack Individual user	995.00	51,740.00
		PI Client Applications		**2,500.00**
5	EA	BatchView Individual user	500.00	2,500.00
		PI Server Components (including one instance of HA at no cost)		**117,500.00**
1	EA	OPC (OLE for Process Control) Interface (Node License)	5,000.00	5,000.00
10,000	EA	Advanced Server Applications Pack		23,000.00
10,000	EA	Data Access		17,500.00
10,000	EA	Enterprise Server (HA)		72,000.00
		Subtotal		**171,740.00**
		Discount		**(2,500.00)**
		Subtotal - Software		**169,240.00**

Software Reliance Program				
Start Date	**End Date**	**Product**		**Total Price (USD)**
10/01/2007	09/30/2012	PI Client Applications		40,720.69
10/01/2007	09/30/2012	PI Server Components		88,213.13
		SRP List Price		**128,933.82**
		Discount		**(34,333.82)**
		Subtotal - SRP		**94,600.00**

Professional Services				
Quantity	**Unit**	**Description**	**List Price (Unit)**	**Total Price (USD)**
		PI Base System Installation		**10,500.00**
4	DAY	PI Services	2,000.00	8,000.00
1	EA	T&L (estimated, invoiced at actual cost)	2,500.00	2,500.00
		ProcessBook/DataLink Power User Training		**9,500.00**

1	EA	T&L (estimated, invoiced at actual cost)	2,500.00	2,500.00
3	DAY	Training Services	2,000.00	6,000.00
1	EA	Training Materials	1,000.00	1,000.00
		Subtotal - Services		**20,000.00**

Training				
Quantity	**Unit**	**Description**	**List Price (Unit)**	**Total Price (USD)**
		Training TRN-		**6,800.00**
4	EA	PI3SM1_STD	1,700.00	6,800.00
		Subtotal - Training		**6,800.00**

Service Package Details

PI Base System Installation

Description
The primary objective is to get a PI System installed so that the customer can take advantage of the RtPM platform. The installation is performed on site by a qualified member of our OSIsoft field service team.

The scope of this package is limited to a single PI server and standard PI System interfaces.

List of Deliverables
The following services are performed:

- Pre-installation checklist review; confirmation that all prerequisites are met before proceeding
- Installation of the PI Server software
    - Creation and sizing of PI server archives
    - Configuration and testing of the PI backup procedure
    - Configuration of a set of basic PI monitoring tags for archiving PI system statistics
- Installation, configuration and test of standard interfaces on acquisition node(s) (Up to 2 interfaces)
    - Validation of communication with the data source
    - Installation and configuration of the PI communication libraries
    - Configuration and testing of buffering
    - Configuration of up to 10,000 tags
- Installation of PI client software on one client station
- Installation of PI System Management Tools on one management station
- Post-Installation verification
- PI system management overview
- OSIsoft technical support overview
- OSIsoft training curriculum overview
- Installation report

Specific Terms
- PI Server hardware and operating system must be installed and operational before OSIsoft's arrival
- Acquisition node hardware and operating system must be installed and operational before OSIsoft arrival - TCP/IP communication must be enabled and operational among all PI System computers
- Most interfaces require third party hardware and software that must be installed and operational before OSIsoft arrival. Specifics requirements will be validated during the pre-installation checklist review.
- Customer's technical staff needs to be available to provide system support (Security, Network and Control Systems)
- Customer must acquire required OSIsoft software media prior to OSIsoft's arrival
- Customer must provide an electronic version of required raw tag information extracted from the data source (Tagname, description, zero, span, engineering units, point type, state information and control system address). Required information will be validated during the pre-installation checklist review.
- Customer must provide a configuration station with MS Excel software
- Customer must arrange for safety training, and any permits required
- Customer must provide all special safety equipment as required
- Travel and living expenses will be invoiced at cost

Typical Timeline

The installation process, from ordering the software to completion, normally takes 4 to 6 weeks:

Week 1 and 2 - Communication of prerequisites, ordering of OSIsoft software, PI server and acquisition node hardware and operating systems, and control system-specific hardware and software. Confirmation of installation date with OSIsoft

Week 3 to 5 - Receive and prepare hardware and software required for the PI System installation

Week 6 - On site installation by OSIsoft (Up to four days)

Monday is usually reserved as a travel day for the Field Service Engineer to travel to the customer's site where the work will be performed. On-site work, therefore, typically starts on a Tuesday.

ProcessBook/DataLink Power User Training

Description

In our PI ProcessBook and PI DataLink class for power users, we teach how to use and maximize the use of our PI Client Applications. In addition of the materials covered in our standard class, we show users how to create reusable displays and reports, create ad-hoc equations and use Visual Basic for Applications to create useful ProcessBook applications.   Much of the class time is dedicated to hands-on activities

List of Deliverables

'- Professional services to deliver an on-site ProcessBook and PI DataLink class (see our web site for detailed class outline: < http://training.osisoft.com>)
- Course documentation for all students - maximum of 12 students per class
- OSIsoft training material will be current to the latest version of our tools. If the buyer wishes to have the class taught on an older version of our software, the customer must specify this at order time so that we can prepare the appropriate course documentation
- Training certificate for each student
- Compilation of training evaluations

Specific Terms

Customer is responsible for providing a properly equipped classroom. The minimum requirements for a classroom are:

- Access to training room for the duration of the class including Monday for software setup
- One PC per student with a Pentium III or better, 512 MB RAM or more, 1 GB free hard disk space, Networked TCP/IP, Windows 2000/XP, Excel, PI SMT, PI Universal Data Server, PI ProcessBook and PI DataLink - Class room equipment: flip chart, a white board or a white screen and a compatible Laptop projector (1024 x 768)

Student body should be comprised of individuals with the following skill set:

 - This class is taught in a Windows 2000/XP environment, and is designed for students who have a good understanding of that environment. You will have to open and close files, locate files in different directories, and use menus and toolbars
- Students will spend an entire day using Microsoft Excel, so knowing how to work in Excel is a pre-requisite

for this class
- No specific knowledge of PI Applications is required

Travel and living:
- Travel and living expenses will be invoiced at cost

Typical Timeline
The class dates will be mutually agreed upon at acceptance of the proposal. OSIsoft requires a minimum of 2 weeks prior notice in order to prepare course documentation and to assign a trainer. OSIsoft will ship training material at least 5 days before the first day of training.

We suggest having the class from Tuesday to Thursday. Monday will be used to install and test training equipment and training software.

Contact Information

Prepared By: Amy Vasquez, 912 236 2001, Ext397471, AVASQUEZ@OSISOFT.COM
Sales Representative: Ron Kolz, 440 720 3670, RKOLZ@OSISOFT.COM

Recommended hardware and system requirements

The recommended system requirements for PI software are detailed on our website at http://techsupport.osisoft.com/support smr systemsizing.aspx. You may also contact OSI Technical Support by phone at 510-297-5828 or email techsupport@osisoft.com to obtain this information. These should be used as guidelines. A validation of these requirements is required prior to the acceptance of these requirements.

Terms and Conditions:

Any order submitted to OSIsoft, Inc ("OSIsoft") by or on behalf of CITY OF SEATTLE - LIGHT DIVISION (DBA SEATTLE CITY LIGHT) ("Customer") will be governed by the Software License and Services Agreement by and between OSIsoft and CITY OF SEATTLE - LIGHT DIVISION (DBA SEATTLE CITY LIGHT) dated _10-31_ , _2007_ *nm* (Agreement # ~~TBA~~) and any corresponding pricing agreements, the terms of which are incorporated herein by this reference to form a separate agreement by and between Customer and OSIsoft ("SLA"). Customer and any party submitting such order(s) agree to be bound by the SLA, and Customer agrees that it will be responsible for any such third parties acting on its behalf.

General Conditions:

a) The Terms and Conditions of the Software License Agreement (SLA) between OSIsoft and the Licensee are the sole and exclusive terms and conditions governing Licensee's purchase and license of products and services from OSIsoft.

b) Additional or different terms and conditions submitted by Licensee, whether on Licensee's purchase order or otherwise, shall be deemed objected to by OSIsoft and shall be of no effect nor in any circumstance binding upon OSIsoft unless accepted by OSIsoft in writing.

c) Payment term is net cash 30 days after invoice date.

d) This Proposal does not include hardware, cables, generic or third party software, or any other such supplies required to use the licensed software.

Software/SRP Conditions:

a) The prices quoted herein are in US$, F.O.B. ~~San Leandro (California)~~ DESTINATION and are valid for a period of 60 days.

b) Shipping and handling of software will be charged at cost to the Licensee and will be added to the invoice.

c) Except for taxes paid by OSIsoft on its net income, all amounts due pursuant to OSIsoft's invoices are net of, and Licensee will be solely responsible for, any shipping charges and withholding, use, sales, value-added, import and any other taxes, fees, tariffs or duties associated with this Proposal or Licensee's use of the OSIsoft products and technical support services.

d) OSI reserves the right to change our price list as we deem necessary.

e) OSI's standard annual SRP subscription renewal rate is 15% of then-current list price.

Acceptance of Proposal

The acceptance of this Proposal can be confirmed either by sending a purchase order with a reference to proposal 4000006533-7 to:

> **OSIsoft, Inc.**
> 777 Davis St.
> Suite 250
> San Leandro, CA 94577
> USA
>
> Attention: Orders
> Fax: 240-368-4765

Or by returning a signed copy of the present Proposal to the fax listed above.

Licensee: CITY OF SEATTLE - LIGHT DIVISION (DBA SEATTLE CITY LIGHT)

Accepted By:

Name: _____

Title: _____

Date: 10/31/7

The following usage terms will apply only to the extent that Licensee orders each type of OSIsoft Product as specified by OSIsoft in its then current price list or otherwise.

Client/Server Products (Currently includes PI System Software, Sigmafine, ProcessPoint and IT Monitor)

Licensee's use of Client Software cannot exceed the number of Individual Licenses specified in accepted Orders and licensed pursuant to this Agreement. Licensee's use of Server Software cannot exceed the number of Datastream Points created in such Server Software (as measured by the OSIsoft Software), Data Connections, Elements, Nodes, or Users as applicable and specified in accepted Orders and licensed under this Agreement. Server Software modules and Datastream Points and Nodes designated by Licensee in an Order for use with one "PI" Server Software module cannot be moved to or otherwise used with any other "PI" Server Software module without OSIsoft's express consent. The "PI" Server Software may not be used to programmatically interoperate with third party applications or Licensee developed applications unless Licensee has purchased the "Data Access Package" Server Software for such "PI" Server. Additionally, except as otherwise expressly provided in this Agreement, once Datastream Points or Nodes have been designated by Licensee in an Order for use with a PI Server Software module, Licensee cannot return such Datastream Points or Nodes to OSIsoft for any credit or refund of any kind. Except for Server to Server Interfaces, Licensee's use of Interfaces will not exceed the number of Data instances specified in accepted Orders and licensed pursuant to this Agreement. Licensee's use of Server to Server Interfaces shall not exceed the number of Data Connections specified in accepted Orders and licensed pursuant to this Agreement.

IT Monitor Server Packages

In using this type of OSIsoft Software, Licensee will limit Datastream Point usage to monitoring IT performance data produced by the number of Nodes licensed, but in no event will total Datastream Point usage exceed the number of Nodes multiplied by 300.

Thin-Client Products (Currently includes RtWebParts and RtPortal)

In using this type of OSIsoft Software, Licensee will not exceed the number of Concurrent Users specified in accepted Orders and licensed under this Agreement.

Enterprise Application Integration (Currently includes RLINK Products)

In using this type of OSIsoft Software, Licensee will not exceed the number of Data Connections between the Enterprise Application Integration software and OSIsoft's server software as specified in accepted Orders and licensed under this Agreement.

Development Systems (Currently includes any OSIsoft Software designated by OSIsoft or Licensee for development or support purposes)

This type of OSIsoft Software is licensed solely for Licensee's internal development and support purposes on a single computer. Such OSIsoft Software cannot be used in production or otherwise used to process any data generated from Licensee's business operations.

Redundant Servers

To qualify as a Redundant Server, the Server may only be used as a back-up system to a designated primary production Server without Client access or Interface connections. Redundant Servers may not contain any Datastream Points that are not also contained in the primary production Server the Redundant Server is backing up. A Redundant Server may only be used as a production Server with Client access and Interface connections during such times that the primary production Server is not in operation.

Third Party Software

Software designated as "Third Party Software" on OSIsoft's price list are not subject to this Agreement. OSIsoft acts only as a distributor for Third Party Software and all licensing terms, support and warranty service, if any, will be provided by the third party vendor for this type of software. Except for OSIsoft's failure to deliver the Third Party Software in accordance with Licensee's accepted Orders, notwithstanding any provision in this Agreement, in no event will OSIsoft be liable to Licensee or to any third party for damages of any kind arising from or related to the Third Party Software.

Usage Definitions

"**OSIsoft Software**" means all those software products delivered to Licensee or licensee's designee including without limitation, (i) those that are designed and designated by OSIsoft to operate on a network server computer ("**Server Software**"), a client computer ("**Client Software**"), or as an interface with certain hardware monitoring devices, third party software and multiple copies of Server Software ("**Interface**"); and (ii) all related documentation, bug fixes and updates delivered to Licensee by OSIsoft or its designee.

"**Concurrent Users**" mean individuals who are accessing the same copy of Server Software at the same time.

"**DataStream Point**" means a tag or module that is created and exists in certain Server Software modules that is used to setup, configure or store data-points or data structures.

"**Data Connection**" means a link between the data generated from one copy of OSIsoft Software and another copy of OSIsoft Software or a third party data source.

"**Element**" means every occurrence of a logical entity in a flow sheet model of equipment that exists within certain Server Software.

"**Individual Licenses**" means the number of client computers onto which Licensee may install Client Software. One Individual License may be used on up to two client computers to facilitate home office use or remote access so long as one Individual License is not used by two individuals at the same time. Individual Licensed Software cannot be used to export data from the OSIsoft Software and serve such data directly or indirectly to another client or CPU computer.

"**Licensee Customers**" means customers of Licensee for whom Licensee may generate, store or process Licensee Data.

"**Nodes**" means a single piece of internet protocol ("**IP**") addressable hardware, a piece of network equipment or a single instance of software application.

"**Users**" means the number of individuals who are authorized to access a copy of Server Software.

EXHIBIT D

Software Reliance Program Terms

1. **Services**

    1.1 **Designated System Manager**. As a condition to OSIsoft's performance of the Software Reliance Program, Licensee must designate one or more "System Manager(s)" as the individual(s) responsible for maintaining the integrity of the hardware and software of the system of which the OSIsoft Products are a part (the "System"). Licensee is responsible for maintaining individual(s) trained as System Manager(s). Licensee personnel may qualify as a System Manager by attending OSIsoft's annual User's Conference and the system management training sessions held in connection with the User's Conference.

    1.2 **Software Reliance Program Services**. For so long as Licensee pays OSIsoft's applicable Software Reliance Program fees, OSIsoft will provide Licensee with the following Services:

    (a) **Telephone Assistance**. OSIsoft will provide the System Manager with the telephone number for the designated OSIsoft Phone Support. The System Manager will be entitled to contact the OSIsoft Telephone Consulting Office or Email Support Desk 7 days a week, 24 hours a day (except for ProcessPoint for which such support will be available on business days between 9am to 6pm Eastern Standard Time) to ask questions or seek advice regarding the use of the OSIsoft Products. OSIsoft will assist the System Manager in using the OSIsoft Products and in identifying and providing workarounds, if possible, for problems with the OSIsoft Products. Such assistance may include computer communications to Licensee's facilities. OSIsoft will use its best efforts to return all telephone calls for support within four (4) hours and answer emails for support within twenty-four (24) hours. For ProcessPoint, response times only apply during support hours).

    (b) **Product Suggestions**. Licensee may submit product suggestions to OSIsoft identifying desired improvements in the OSIsoft Products. OSIsoft retains the right to determine the final disposition of all such suggestions and Licensee recognizes that OSIsoft is free to use such suggestions in any manner. If OSIsoft decides in its sole judgment to incorporate any such suggestion, it will do so by providing Licensee with an Update, as described in subsection (d) below.

    (c) **Bug Fixes**. OSIsoft will use reasonable efforts to provide Licensee with an avoidance procedure for and a correction of each material defect in the OSIsoft Products that cause the OSIsoft Products not to conform in all material respects with the OSIsoft Documentation (a "Bug Fix").

    (d) **Software Updates**. As OSIsoft develops permanent solutions for known OSIsoft Products problems, OSIsoft will, from time to time, incorporate such solutions into planned updates to the OSIsoft Products, as applicable, ("Updates"). Such Updates may also include those minor enhancements and extensions or other changes to the OSIsoft Products as are determined by OSIsoft to be suitable to the uses made of the OSIsoft Products by OSIsoft's licensees and are made available by OSIsoft to its other licensees without additional charge. OSIsoft will provide Licensee's whose Software Reliance Program fees are current with such Updates as they are released. OSIsoft will provide Licensee with such instructions and/or documentation that OSIsoft considers reasonably necessary to assist in a smooth transition to use of such Updates. In the event OSIsoft decides in its discretion to update the appropriate software reference manual or to issue release notes or other documentation corresponding to Updates, OSIsoft will provide one copy of the same to Licensee at no charge as they become available.

    (e) **Interface Exchanges**. Licensee may exchange one standard interface for another if the only difference between the two interfaces is the operating system with which the interface is compatible. These exchanges will be processed free of any licensing fees. For example, Fisher Chip on VMS may be exchanged for Fisher Chip on NT, for no license fee. OSIsoft will have the right to charge any shipping, handling, tariffs or other OSIsoft costs related to delivering any replacement interface.

    1.3 **Remote Support Service**. Remote Support Service for OSIsoft Products involve the use of remote data links from OSIsoft to Licensee's System to render the services to Licensee described in Section 1.2 above. OSIsoft will maintain compatible equipment or emulators to be able to remotely operate on Licensee's System. In order to receive Remote Support Service for OSIsoft Products, Licensee must meet the following prerequisites:

    (a) Licensee must have an OSIsoft-approved modem or other approved connection to the System, which, at a minimum, will accept reports, messages, and file transfers and a separate telephone line for simultaneous voice communication located with the System.

    (b) Licensee's System must be available to OSIsoft when required, and OSIsoft must have a logon, password, and sufficient priority to access the System when needed.

1.4 **On-Site Assistance.**

(a)   In the event that OSIsoft is unable to resolve a problem with the OSIsoft Products through telephone assistance pursuant to Section 1.2(a) above or through Remote Support Services pursuant to Section 1.3 above, the System Manager may request OSIsoft to provide on-site assistance. After verifying the need for on-site assistance, including without limitation that Licensee has complied with the terms of Section 1.3(a), OSIsoft will use its best efforts, subject to the reasonable availability of its personnel, to commence travel for such on-site assistance within one business day for travel of less than 1000 miles from OSIsoft's facilities, and within two business days otherwise.   OSIsoft will render on-site assistance to Licensee until resolution of the problems identified or for so long as reasonable progress is, in OSIsoft's judgment, being made. OSIsoft may suspend the performance of on-site assistance as required to obtain additional resources, but will resume such assistance when such resources become available.

(b)   OSIsoft's obligation with respect to on-site assistance is limited to isolating, identifying, and reporting problems associated with OSIsoft Products. If problems are isolated to OSIsoft Products, OSIsoft will provide Licensee with Bug Fixes, as available. As an interim solution, until a Bug Fix is available, OSIsoft will use reasonable efforts to assist Licensee in finding an avoidance procedure, if possible, which allows use of the System. Licensee has sole responsibility and liability for implementation of OSIsoft's recommended interim solution.

(c)   OSIsoft will invoice and Licensee will pay OSIsoft's out of pocket expenses incurred in providing on-site assistance. If on-site assistance is necessary because Licensee has failed to allow OSIsoft to provide Remote Support Service, then OSIsoft will invoice and Licensee will pay for the time spent by OSIsoft personnel in connection with providing such on-site assistance, in accordance with OSIsoft's then-current custom software services rates. The origin of any problems associated with the OSIsoft Products will not effect any amounts invoiced for on-site services, even if such problems are caused by Nonqualified Products (as defined below).

1.5 **Renewal of Subscription**

Licensee's Software Reliance Program subscription shall remain in effect unless Licensee notifies OSIsoft of its intent to cancel the Software Reliance Program at least 30 days prior to expiration of the then current term.

2. **Conditions to the Software Reliance Program**

All Software Reliance Program services to be rendered by OSIsoft hereunder are subject to the following conditions:

2.1   **Nonqualified Products**. *"Nonqualified Products"* shall include any hardware or software product other than the OSIsoft Products, as well as any custom application program or other software developed by OSIsoft for Licensee. OSIsoft shall have no obligations or responsibilities of any kind hereunder with respect to Nonqualified Products. If the performance by OSIsoft of the Software Reliance Program is made more difficult or impaired because of Nonqualified Products, OSIsoft shall so notify Licensee, and Licensee will immediately remove the Nonqualified Product at its own risk and expense during any efforts to render services under this Agreement. Licensee shall be solely responsible for the compatibility and functioning of Nonqualified Products with the OSIsoft Products or the OSIsoft Remote Application.

2.2   **System Versions**. All Licensee System hardware and software must be maintained at the revision level deemed necessary by OSIsoft for proper operation of the OSIsoft Products.

2.3   **Backup Procedures**. Licensee is solely responsible for maintaining a procedure external to the OSIsoft Products for reconstruction of lost or altered files, data, or programs to the extent deemed necessary by Licensee and for actually reconstructing any lost or altered files, data or programs.

2.4   **Operator Procedures**. Licensee shall at all times follow routine operator procedures as specified in OSIsoft operating manuals or other operating manuals for the OSIsoft Products.

2.5   **Licensee Representative**. A designated representative of Licensee shall be present at all times OSIsoft is performing services on Licensee's premises or the premises of Licensee's Client. OSIsoft personnel will not enter or remain at Licensee's premises or the premises of Licensee's Client in the absence of such Licensee representative.

2.6   **Isolation**. Licensee is solely responsible for ensuring that the System is isolated from any process links or anything else that could cause harm before requesting or receiving Remote Support Service or on-site assistance.